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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,139	03/25/2004	John A. Eaton	50121-00003	7709
25231	7590	09/08/2006	EXAMINER	
MARSH, FISCHMANN & BREYFOGLE LLP 3151 SOUTH VAUGHN WAY SUITE 411 AURORA, CO 80014			WEAVER, SUE A	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/809,139	EATON ET AL.
Examiner	Art Unit	
Sue A. Weaver	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 30 June 2006.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1 and 3-32 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 13-24, 26, 27 and 32 is/are allowed.

6)  Claim(s) 1, 3-8, 25, 28, 29 and 31 is/are rejected.

7)  Claim(s) 9-12 and 30 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. \_\_\_\_ .  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_ . 5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_ .

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-6, 25, 29 and 31 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley '377, of record.

Member 30 for example defines a recess in the bottom wall if the container of Buckley with grooves 32 and 34 at an angle and receiving the thumb as shown in Figure

6. The container of Buckley is clearly capable of holding a beverage such as when making eggnog. To have provided only one groove and forgo the advantage of left and right hand use would have been no more than an obvious elimination of a part and it's function.

2. Claims 7 and 8 remain are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Fulcher et al '350, of record.

To have connected the grooves to form one continuous gripping recess for ease of use in the manner taught by Fulcher et al at 4 would have been most obvious. The feature 5 of Fulcher et al is considered to define an inverted V.

3. Claim 28 remains rejected under 35 U.S.C. 103(a) as being unpatentable over the reference as applied to claim 1 above, and further in view of Tardif '452, of record.

To have further provided the container of Buckley with upper walls that are tapered for ease of pouring would have been obvious in view of such teaching by Tardif at 20.

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4. Claims 9-12 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claims 13-24, 26, 27 and 32 are allowed while claim 2 has been canceled.

6. Applicant's arguments filed 6/30/06 have been fully considered but they are not persuasive. Applicant's argument that a bowl is not a container is not convincing in view of references to the contrary, see for example Tupper and Lindstrom. By applicant's definition a glass or a cup would not be a container either. However prior art shows that bowls are indeed considered to be container. Furthermore applicant provides a rather curious definition of a cavity and recess. Again prior art shows the terms as alternatives for the same construction, see for example Scarrott et al.

Applicant's definition of cavity would preclude that commonly accepted for dental caries.

7. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

## **Certificate of Mailing**

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (571) 272-4548. The examiner can normally be reached on Tuesday-Friday from 5:30 to 4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor is Nathan Newhouse. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SW

*Sue A Weaver*  
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PRIMARY EXAMINER  
GROUP 3700